

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KENNARD ISALIAH LOVE,

Plaintiff,

v.

SALINAS VALLEY STATE PRISON,

Defendant.

Case No. [16-cv-01981-JD](#)

**ORDER OF DISMISSAL WITH  
LEAVE TO AMEND**

Plaintiff, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

**DISCUSSION**

**STANDARD OF REVIEW**

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Although a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above

the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. The United States Supreme Court has explained the “plausible on its face” standard of *Twombly*: “While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that: (1) a right secured by the Constitution or laws of the United States was violated, and (2) the alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

### LEGAL CLAIMS

Plaintiff argues that prison officials improperly classified him as a sex offender based on his commitment crime. The Due Process Clause protects against the deprivation of liberty without due process of law. *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005). In order to invoke the protection of the Due Process Clause, a plaintiff must first establish the existence of a liberty interest for which the protection is sought. *Id.* Liberty interests may arise from the Due Process Clause itself, or from an expectation or interest created by prison regulations. *Id.* The Due Process Clause itself does not confer on inmates a liberty interest in avoiding “more adverse conditions of confinement.” *Id.* The existence of a liberty interest created by prison regulations is determined by focusing on the nature of the deprivation. *Sandin v. Conner*, 515 U.S. 472, 481-84 (1995). Such liberty interests are “generally limited to freedom from restraint which . . . imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Id.* at 484; *Myron v. Terhune*, 476 F.3d 716, 718 (9th Cir. 2007).

Changes in conditions relating to classification and reclassification do not implicate the Due Process Clause itself. *See Hernandez v. Johnston*, 833 F.2d 1316, 1318 (9th Cir. 1987) (citing *Moody v. Dagget*, 429 U.S. 78, 88 n.9 (1976)) (no constitutional right to particular classification). Yet, the classification of an inmate as a sex offender may be the type of atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life that the

Supreme Court held created a protected liberty interest in *Sandin*. See *Neal v. Shimoda*, 131 F.3d 818, 827-30 (9th Cir. 1997). While such a liberty interest is not created merely by the requirement that sex offenders participate in a specified treatment program, *see id.* at 830, in *Neal* the Ninth Circuit found that “the stigmatizing consequences of the attachment of the ‘sex offender’ label coupled with the subjection of the targeted inmate to a mandatory treatment program whose successful completion is a precondition for parole eligibility create the kind of deprivations of liberty that require procedural protections,” *id.* Under these circumstances, inmates are entitled to procedural due process before being classified as sex offenders. *See id.* at 830-31 (inmates entitled to procedural protections of *Wolff v. McDonnell*, 418 U.S. 539 (1974), including notice of reasons for classification as sex offender and a hearing at which the inmate may call witnesses and present documentary evidence in his defense).

Plaintiff states that an “R” suffix was improperly added to his custody designation which denotes an underlying sex related offense. Plaintiff was charged as being an accomplice when another defendant forced the victim to perform sex acts and assaulted her. Plaintiff pled guilty to the assault but the sex related charges were dismissed. At a Unit Classification Committee (“UCC”) hearing on September 17, 2014, the committee noted that plaintiff did not participate in the sexual acts but added the “R” suffix because plaintiff had an opportunity to intercede in the sexual assault but did not. Complaint at 9.

The complaint is dismissed with leave to amend. Plaintiff must provide more information regarding any atypical and significant hardship associated with the “R” suffix and how the procedural protections of *Wolff* were denied. Plaintiff must present specific allegations, simply attaching exhibits is insufficient. Plaintiff may also wish to add as a defendant the Secretary of CDCR, in order to obtain the injunctive relief he seek. This “R” suffix was added while in this district, but plaintiff has since been transferred to a different prison in another district.

### CONCLUSION

1. The complaint is **DISMISSED** with leave to amend. The amended complaint must be filed within **twenty-eight (28) days** of the date this order is filed and must include the caption and civil case number used in this order and the words AMENDED COMPLAINT on the first


1 page. Because an amended complaint completely replaces the original complaint, plaintiff must  
2 include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th  
3 Cir. 1992). He may not incorporate material from the original complaint by reference. Failure to  
4 amend within the designated time will result in the dismissal of this case.

5 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the  
6 Court informed of any change of address by filing a separate paper with the clerk headed "Notice  
7 of Change of Address," and must comply with the Court's orders in a timely fashion. Failure to  
8 do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of  
9 Civil Procedure 41(b).

10 **IT IS SO ORDERED.**

11 Dated: June 1, 2016

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JAMES DONATO  
United States District Judge

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NORTHERN DISTRICT OF CALIFORNIA

KENNARD ISALIAH LOVE,  
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SALINAS VALLEY STATE PRISON,  
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**CERTIFICATE OF SERVICE**

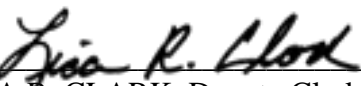
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 1, 2016, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Kennard Isaiah Love ID: AA-7389  
California Men's Colony State Prison  
P.O. Box 8101  
San Luis Obispo, CA 93409

Dated: June 1, 2016

Susan Y. Soong  
Clerk, United States District Court

By:   
LISA R. CLARK, Deputy Clerk to the  
Honorable JAMES DONATO

United States District Court  
Northern District of California